IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
Charlotte Division

IN RE: GARLOCK SEALING TECHNOLOGIES LLC,[1] *et al.*, Debtors.	Case No. 10-BK-31607 Chapter 11 Jointly Administered
GARLOCK SEALING TECHNOLOGIES LLC, *et al.*, Plaintiffs, v. SIMON GREENSTONE PANATIER BARTLETT, APLC, *et al.*, Defendants.	Case No. 3:14-cv-00116-MOC Adversary Proceeding No. 14-AP-03037

SUBMISSION OF RECENT CLAIMANT COMMITTEE'S ARGUMENT AT ODDS WITH SIMON GREENSTONE DEFENDANTS' MOTION TO WITHDRAW THE REFERENCE

Garlock Sealing Technologies LLC and Garrison Litigation Management Group, Ltd. (collectively, "Garlock") submit this newly acquired information in opposition to Defendants Simon Greenstone Panatier Bartlett, APLC, Jeffrey B. Simon, David C. Greenstone, the Estate of Ronald C. Eddins and Jennifer L. Bartlett's (collectively, "Simon Greenstone" or "Defendants") Motion to Withdraw the Reference.[2]

[1] The three debtors in these jointly administered cases are Garlock Sealing Technologies LLC; Garrison Litigation Management Group, Ltd.; and The Anchor Packing Company.

[2] This submission refers to Defendants' Memorandum of Law in Support of Motion to Withdraw the Reference (Docket No. 2) as the "Simon Brief."

The parties completed the briefing of Simon Greenstone's motion last month. Last week, however, the Official Committee of Asbestos Personal Injury Claimants (the "Committee")—on which Simon Greenstone serves—made contentions in the Bankruptcy Court so fundamentally inconsistent with Simon Greenstone's argument in support of the pending motion that this Court should be aware of them.

Simon Greenstone submitted its original brief to the Bankruptcy Court on March 14, 2014. In this brief, it argued:

> Additionally, nothing about this case implicates the uniform administration of bankruptcy proceedings. The claims in this case do not stem from the bankruptcy itself. Nor are they claims that are integrally related to bankruptcy's claims-allowance process.

Simon Brief at 6.

By contrast, at a May 8, 2014 hearing before Bankruptcy Judge Hodges concerning its attorneys' fees, the Committee's counsel described the relationship between its work on the instant adversary proceedings and the bankruptcy case:

> That project was devoted to figuring out what the Committee could and should do faced with the express threat articulated in October by the debtors to commence litigation against some law firms where the Committee perceives a threat to the proper focus of the bankruptcy case and the reorganization effort from what, by some lights, might be characterized as the detour into complicated RICO litigation in other, in various forums with multiple issues, *all of which flow right out of the estimation and the estimation order and so have a strong nexus to the bankruptcy case and the reorganization effort*.
>
> Our project was, recognizing that a debtor has significant discretion over the commencement of litigation, whether we could develop an adequate theory under the Bankruptcy Code and non-bankruptcy law for invoking the power of the Court to intervene, oversee, and control the debtors' litigation agenda should there be a manifest threat to the reorganization process.

Transcript at 6 (emphasis added). The quoted transcript excerpts are attached as **Exhibit A**.

Later in the hearing, the Committee's counsel further explained the continuing connection between the adversary proceedings and bankruptcy case:

> Now when the estimation order came out we were, frankly, very surprised. I think, to some extent, they were surprised, too. Necessarily shifted our priorities. *We chose not to interfere at that time, but we have in the ready because of the work that we devoted in November and December the means of invoking your authority should we conclude that their interest in pursuing these law firms is threatening the proper focus of the reorganization effort* and it's too early to tell. Those cases are in their germinal stages. There's all kinds of preliminary motions, as you well know, but if it goes in a certain direction we will be here asking you to intervene and control them. And that good—that was good and valuable work for the interests in our constituencies and fully compensable under the standards.

Id. at 39 (emphasis added).

Thus, Simon Greenstone is telling this Court that "nothing about this case implicates the uniform administration of bankruptcy proceedings" while the Committee it serves on is telling the Bankruptcy Court that this litigation has "a strong nexus to the bankruptcy case and the reorganization effort." If Simon Greenstone's motion to withdraw the reference before this Court "goes in a certain direction," the Committee will ask the Bankruptcy Court to "intervene and control" the adversary proceedings because of their close connection to Garlock's reorganization. Garlock submits that this type of advocacy will continue if the Court withdraws the reference or transfers the adversary proceedings to different districts.[3] Accordingly, this and the other adversary proceedings should remain in the forum that is handling the bankruptcy case, has handled a similar adversary proceeding and is the customary site specified in the standing Order of Reference —the Bankruptcy Court.[4]

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[3] Indeed, the Committee perceives the prospect of litigating these adversary proceedings in "various forums" as a "threat" to Garlock's reorganization efforts. Transcript at 6.

[4] In addition, it has come to Garlock's attention that on a Motion to Withdraw the Reference, the Court should have the opportunity to review the Complaint. It is attached as **Exhibit B**.

This 16th day of May, 2014.

/s/ Garland S. Cassada
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CERTIFICATE OF SERVICE

In accordance with Local Rule 5.3(C), the undersigned attorney for Plaintiff certifies that a copy of the foregoing **Submission of Recent Claimant Committee's Argument at Odds with Simon Greenstone Defendants' Motion to Withdraw the Reference** has been served on the following attorneys for the parties in this action by electronic filing in the CM/ECF system as follows:

Sara W. Higgins (shiggins@higginsowens.com)
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This 16th day of May, 2014.

/s/ Garland S. Cassada
Garland S. Cassada

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
Charlotte Division

IN RE: GARLOCK SEALING TECHNOLOGIES LLC,[1] *et al.*, Debtors.	Case No. 10-BK-31607 Chapter 11 Jointly Administered
GARLOCK SEALING TECHNOLOGIES LLC, *et al.*, Plaintiffs, v. SIMON GREENSTONE PANATIER BARTLETT, APLC, *et al.*, Defendants.	Case No. 3:14-cv-00116-MOC Adversary Proceeding No. 14-AP-03037

APPENDIX TO SUBMISSION OF RECENT CLAIMANT COMMITTEE'S ARGUMENT AT ODDS WITH SIMON GREENSTONE DEFENDANTS' MOTION TO WITHDRAW THE REFERENCE

Exhibit Number	Description
Exhibit A	Transcript from May 8, 2014 hearing in *In re Garlock Sealing Technologies LLC*, Case No. 10-31607 (Bankr. W.D.N.C.) (excerpts)
Exhibit B	Complaint filed January 9, 2014 in *Garlock Sealing Technologies LLC v. Simon Greenstone Panatier Bartlett, APLC*, Case No. 14-AP-03037 (Bankr. W.D.N.C.)

[1] The three debtors in these jointly administered cases are Garlock Sealing Technologies LLC; Garrison Litigation Management Group, Ltd.; and The Anchor Packing Company.

EXHIBIT A

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION

IN RE:	:	Case No. 10-31607
GARLOCK SEALING TECHNOLOGIES LLC, ET AL.,	:	Chapter 11
	:	Charlotte, North Carolina
Debtors.		Thursday, May 8, 2014
	:	9:00 a.m.

: :

TRANSCRIPT OF 2ND CONTINUED HEARING ON
(3463) MOTION FOR ELEVENTH INTERIM APPLICATION OF
CAPLIN & DRYSDALE, CHARTERED FOR ALLOWANCE OF
COMPENSATION AND REIMBURSEMENT OF EXPENSES WITH
RESPECT TO SERVICES RENDERED AS CO-COUNSEL TO
THE OFFICIAL COMMITTEE OF ASBESTOS PERSONAL INJURY
CLAIMANTS FOR PERIOD NOV. 1, 2013 to Feb. 28, 2014
BEFORE THE HONORABLE GEORGE R. HODGES,
UNITED STATES BANKRUPTCY JUDGE

APPEARANCES:

For the Debtors:	Robinson Bradshaw & Hinson, P.A. BY: GARLAND S. CASSADA, ESQ. 101 N. Tryon Street, Suite 1900 Charlotte, NC 28246
	Rayburn Cooper & Durham, P.A. BY: JOHN R. MILLER, JR., ESQ. 227 West Trade St., Suite 1200 Charlotte, NC 28202
Audio Operator:	BARBARA J. SIFFORD
Transcript prepared by:	Janice Russell Transcripts 1133 Tanager Trail Virginia Beach, VA 23451 (757) 422-9089 trussell31@cox.net

Proceedings recorded by electronic sound recording; transcript produced by transcription service.

APPEARANCES (Continued):

For Creditor, Future Asbestos Claimants:	Grier, Furr & Crisp, P.A. BY: JOSEPH W. GRIER, III, ESQ. 101 N. Tryon Street, Suite 1240 Charlotte, NC 28246
For Official Committee of Asbestos Personal Injury Claimants:	Caplin & Drysdale, Chartered BY: TREVOR W. SWETT, ESQ. One Thomas Circle, NW, Suite 1100 Washington, DC 20005
	Moon Wright & Houston, PLLC BY: TRAVIS W. MOON, ESQ. 227 West Trade Street, Suite 1800 Charlotte, NC 28202
For Interested Party, Coltec Industries, Inc.:	Moore & Van Allen PLLC BY: DANIEL G. CLODFELTER, ESQ. 100 N. Tryon St., Suite 4700 Charlotte, NC 28202

APPEARANCES (via telephone):

For Interested Party, Ford Motor Company:	McGuireWoods LLP BY: K. ELIZABETH SIEG, ESQ. One James Center 901 East Cary Street Richmond, VA 23219-4030

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P R O C E E D I N G S

(Call to Order of the Court)

THE COURT: Good morning. Have a seat.

MR. SWETT: Good morning, Your Honor.

MR. CASSADA: Good morning, Your Honor.

THE COURT: All right. Mr. Cassada, why don't we start over here and go across. Start with the Mayor and --

MR. CLODFELTER: Morning, Your Honor. Dan Clodfelter representing Coltec Industries.

MR. CASSADA: Good morning, Your Honor. Garland Cassada here for the debtors.

MR. MILLER: Morning, Your Honor. Jack Miller, Rayburn Cooper & Durham, also for the debtors.

MR. SWETT: Good morning, Your Honor. Trevor Swett, Caplin & Drysdale, counsel to the Official Committee of Asbestos Personal Injury Claimants, along with Tom Moon, Moon Wright & Houston.

MR. MOON: Morning, Your Honor.

THE COURT: Okay.

MR. GRIER: Morning, Your Honor. Joe Grier, Future Claims Representative.

THE COURT: That it?

All right. We're here on the fee application, I guess. So --

MR. SWETT: Yes, Your Honor. This is Caplin &

Drysdale's 11th interim fee application covering the period November of 2013 through February 2014.

I'm going, for my opening, I'm going to largely stand on our papers because we're under some time pressure. Mr. Miller has to be out of here by 10:30.

So I'll just summarize briefly and then give him the floor and then come back and respond to his points.

There are several matters set out in the application that has prompted objections. One is efforts devoted to the Legal Newsline appeal and to the Aetna-Rawlings application for access to 2019 exhibits. The Legal Newsline appeal remains pending. The Aetna-Rawlings application resulted in an Order in their favor subject to your decree that the exhibits not be shared or transferred and to certain other protections that we negotiated in a form of order. There was no appeal.

The other specific objection made by the debtors has to do with something that we labeled the Litigation Project. The objection was that the general description of the matter was insufficient to allow the debtors to evaluate the appropriateness of the charges. The problem there, of course, is that it is litigation. Work product protection does apply. At the same time, the lawyers are obliged to meet the fee application standards, as we fully recognize. The upshot was that we set forth in -- in our -- in our application an explanation of that project that went beyond what we think is

appropriately required of us under that balance, but we didn't want to have to get hung up on that fight over the adequacy of the descriptions and so we came forth with what I think is an all-to-generous description of what we were about.

That project was devoted to figuring out what the Committee could and should do faced with the express threat articulated in October by the debtors to commence litigation against some law firms where the Committee perceives a threat to the proper focus of the bankruptcy case and the reorganization effort from what, by some lights, might be characterized as the detour into complicated RICO litigation in other, in various forums with multiple issues, all of which flow right out of the estimation and the estimation order and so have a strong nexus to the bankruptcy case and the reorganization effort.

Our project was, recognizing that a debtor has significant discretion over the commencement of litigation, whether we could develop an adequate theory under the Bankruptcy Code and non-bankruptcy law for invoking the power of the Court to intervene, oversee, and control the debtors' litigation agenda should there be a manifest threat to the reorganization process.

That's a complicated endeavor. It was a substantial project. It was under time pressure because of the timing expressed in the debtors' threats. It is integral to this

bankruptcy case given the nature of it, as defined by the debtors from Day 1 in their information brief, where the struggle between the debtors and the tort claimants has been postured by the debtors as, in large measure, one pitting the debtors against certain law firms. But their purpose in pitching it that way is to devalue the claims and produce, in the end, the best possible deal for Garlock in a plan of reorganization making it entirely appropriate, we submit, for the Committee to have its counsel devote efforts to appropriate countermeasures pushed back and counterforce to ensure that whatever plan emerges from this case, this highly contentious, litigation-intensive case, is a fair and balanced one from the point of view of the asbestos claimants, not the lawyers, but the claimants, who, after all, are the very reason why Garlock is in bankruptcy.

And so we hope that the explanation given of that project in the application cures whatever deficiency there may have been in the original descriptions of the time submitted. And I'm not conceding that there were deficiencies. I think that we did an appropriate job of, first of all, protecting the thoughts, theories, and impressions of counsel, which are immune from disclosure, while also being quite particular about the nature of the tasks being carried out. We specify in the line items of the time entries whether the work was devoted to formulating strategy, legal research, drafting of internal

memos, drafting of pleadings, and so forth.

So there's no mystery surrounding the nature of the activities that we were about. The label, Litigation Project, was adopted in order to mask appropriately the work product that was the focus of our thinking in deploying those efforts. That seems to me to have been appropriate. They objected, however, and, as I mentioned, we didn't want to get hung up on the question of adequate description so we went further than we were required to do.

The legal standard is a subject that I think bears comment in this, in this brief opening. In their original objection the debtors seemed to suggest that the standard should be whether our activities conferred a benefit on them and their estate and we countered that that's not right, that this is a case pitting the interest of large creditor constituency against the debtors and our duty runs to that constituency, not to the debtors or their estate, and the question is whether what we were doing was appropriately aimed at fostering and promoting the interests of our constituency.

They then responded in their supplemental objection that, putting forth a standard that they get out of an unpublished Sixth Circuit decision. And I'm not going to embrace that standard as definitive for all purposes, but I'm certainly willing to have this application considered under it. That standard is whether the activities were undertaken in the

inevitably, invoked.

The Litigation Project, turn to that. It serves the debtors' interest to suppose that the estimation order answers all questions. Nothing remains, but the imposition of a plan highly favorable to the debtors. That is not our view of the world. You'll recall that when you declined Legal Newsline's application to open the courtroom for all phases of the estimation trial you recognized that the estimation was not a dispositive proceeding, but a simple step towards formulation of a plan. It's also the order is interlocutory. It is not now properly appealable. It depends, in large measure, on what they try to do with it. One of the things they're trying to do with it right now is to solidify their position and leverage the decision through these lawsuits against the law firms. They hope that that will enhance their position for the endgame of the plan, once again implicating quite clearly the interest of our constituency.

So that when we set out faced with these threats that were uttered in the context of discussion between the Committee and the debtors to sue lawyers who represent large numbers of our constituents, we had a vital interest in seeing whether there were appropriate grounds. And this is a novel issue. Case law here is sparse for persuading you, if and when we decided it was the right thing to do, to come in and control their litigation agenda and prevent the litigation meltdown.

Now when the estimation order came out we were, frankly, very surprised. I think, to some extent, they were surprised, too. Necessarily shifted our priorities. We chose not to interfere at that time, but we have in the ready because of the work that we devoted in November and December the means of invoking your authority should we conclude that their interest in pursuing these law firms is threatening the proper focus of the reorganization effort and it's too early to tell. Those cases are in their germinal stages. There's all kinds of preliminary motions, as you well know, but if it goes in a certain direction we will be here asking you to intervene and control them. And that good -- that was good and valuable work for the interests of our constituencies and fully compensable under the standards.

This notion that they detect no evidence of a constituency-wide interest in issues when the Committee is here and active is a little bit of a bootstrap. The remote parties look to the Committee to address the constituency-wide interest and, therefore, are less active than they might otherwise be and to say that that level of passivity on the part of the remote parties is evidence that there is no real interest in the issues is just illogical and false.

We happen to believe that the bringing of those lawsuits is bad for the reorganization process. Stated differently, if it was such a good idea why didn't they do it

before bankruptcy? They're using the bankruptcy for a protected haven from litigation efforts aimed at producing a good plan for them.

As for their implicit pretense that those lawsuits have nothing to do with the plan or with the reorganization case, I can tell you this, and I think it says it all. Had there been a deal last fall there would be no such lawsuits. Those lawsuits are the direct outgrowths of the estimation. The allegations in those complaints could have been taken from their, from their estimation briefs. They are hand in glove. And to the extent they tried to use those lawsuits to leverage the estimation order and impose a bad plan, we're going to be in there pitching against it.

(Pause)

MR. SWETT: A few specifics for joinders. They say that the constituency has no proper interest in the 2019 exhibits being accessed by strangers to the case. Well, Judge Stark, who gave Garlock access to 2019s in 12 cases; by the way, in proceedings in which we were full participants contrary to the suggestion of Mr. Miller. He recognized that, yes, there are confidentiality interests here. There are privacy interests in this information, limited though it be, that weigh against disclosure. He did not find them controlling. In the balance of considerations he thought those materials should be provided to Garlock, albeit for strictly limited purposes, but

CERTIFICATE

I, court approved transcriber, certify that the foregoing is a correct transcript from the official electronic sound recording of the proceedings in the above-entitled matter.

/s/ Janice Russell May 12, 2014

Janice Russell, Transcriber Date